

UTILITY PATENT**ATTORNEY DOCKET NO. SAM2056****REMARKS****The Claimed Invention**

The claimed invention is directed to an adjustable chair device, an associated kit and a method of using same for use in providing a means for reclining on an uneven surfaces.

The Pending Claims

Prior to entry of the above amendments, Claims 1-20 are pending. Claims 1-16 are directed to the adjustable chair device. Claims 17-19 are directed to the associated kit. Claim 20 is directed to a method of using the kit for assembling the adjustable chair device for use on an uneven surface

The Office Action

Claims 1-19 stand provisionally restricted.

Claims 1-2, 4-6, 9-13, and 17, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Shank (6,036,148).

Claims 3 and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Shank (6,036,148) in view of Burr (6,520,459).

Claims 7-8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Shank in view of DeWitt (4,408,743).

Claims 14-16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Shank in view of Sorrell (5,271,422).

RESPONSE TO SPECIFIC OBJECTIONS AND REJECTIONS

The Examiner's specific objections and rejections are reiterated below as small indented bold print, followed by Applicants' response in normal print.

RESTRICTION

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-19, drawn to product, classified in class 297, subclass 344.12.

II. Claim 20, drawn to method of using the apparatus, classified in class 29.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the method of using is not needed in order to know

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how to use the chair. The occupant can use another method to use this chair and the products of this chair can be used to make something other than a chair for example stool, sofa, lawn chair etc.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Anthony Campbell on 9/22/04 a provisional election was made with traverse to prosecute the invention of the product, claims 1-19. Affirmation of this election must be made by applicant in replying to this Office action. Claim 20 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The applicant acknowledges this restriction and elects to argue the patentability of group I, defined by claims 1-19. Accordingly, the applicant has canceled claim 20 without prejudice.

REJECTION UNDER 35 U.S.C. §102(b)

Claims 1-2,4-6, 9-13, and 17,19 are rejected under 35 U.S.C. 102(b) as being anticipated by Shank (6,036,148). Shank discloses the use of a adjustable chair device for use on uneven surfaces comprising: a seat (14); a back (16) pivotally attached to said seat; four upper legs (12) pivotally attached to said seat; two armrests (figure 1), each armrest is pivotally attached to two of said four upper legs and pivotally attached to said back; four flanges (22), each flange having an eyelet orifice (fig. 2), wherein each flange is rigidly attached to one of each of said four upper legs; four lower legs (20), each lower leg is slidably engaged within said eyelet orifice of one of each of said four flanges; and four grommets (22, see fig.1), each grommet having a lock hole, each grommet is pivotally attached to one of each of said four upper legs, wherein said lock hole of each grommet is slidably engaged with one of each of said four lower legs. In regards to claim 2, comprising four footers (30), each footer is attached to one of each of said four lower legs. In regards to claims 4 & 19, further comprising four caps (42), each cap is attached to one of each of said four lower legs. In regards to claim 5, wherein each upper leg of said four upper legs is made of aluminum tubing. In regards to claim 6, wherein each lower leg of said four lower legs are made of aluminum tubing. In regards to claim 9, wherein the seat is made of aluminum tubing with fabric, columns 1-2. In regards to claim 10, wherein the back is made of aluminum tubing with fabric. In regards to claim 11, wherein the armrests are made of aluminum. In regards to claim 12, wherein each flange of said four flanges is made of aluminum. In regards to claim 13, wherein each grommet of said four grommets is made of aluminum. In regards to claim 17, further comprising a kit comprising a seat, back, four upper legs, two armrest, four flanges, and four grommet.

First, the applicant has subsequently canceled claims 2-16 and 18-19 without prejudice. Second, the applicant has subsequently amended claims 1 and 17 include elements not taught by the Shank reference. Therefore, this rejection should be withdrawn.

FIRST REJECTION UNDER 35 U.S.C. §103(a)

Claims 3 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shank (6,036,148) in view of Burr (6,520,459). Shank shows the use of all the claimed

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invention but fails to show the use of a swivel ball joint attached to a footer. Burr teaches the use of a swivel ball joint (14) attached to a footer (10). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the lower legs with a swivel ball joint attached to the footer as taught by Burr, in order to provided a limited amount of movement.

The applicant has subsequently canceled claims 3 and 18 without prejudice. Therefore, this rejection should be withdrawn.

SECOND REJECTION UNDER 35 U.S.C. §103(a)

Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shank in view of DeWitt (4,408,743). Shank shows the use of all the claimed invention but fails to show the use of the seat and back made of nylon webbing. DeWitt teaches the use of nylon webbing. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the webbing with nylon as taught by DeWitt, in order to for the occupant to be more comfortable in the seated position.

The applicant has subsequently canceled claims 7-8 without prejudice. Therefore, this rejection should be withdrawn.

THIRD REJECTION UNDER 35 U.S.C. §103(a)

Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shank in view of Sorrell (5,271,422). Shank shows the use of all the claimed invention but fails to show the use of the footer and cap is made of a plastic selected from the group consisting of rubber. Sorrell teaches the use of the footer and cap is made from a plastic selected from the group consisting of rubber. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the footer and cap with rubber as taught by Sorrell, in order to keep the chair more stable when the occupant is in the seated position.

The applicant traverses this rejection in part. The applicant has subsequently canceled claims 14 -16 without prejudice. Second, the applicant has subsequently amended claims 1 and 17 include many of these elements found in original claims 14-16. In particular, the applicant has removed the element of rubber from the claim set which eliminates the Sorrell reference which teaches rubber. Therefore since cited references, in whole or in part, neither teach all of the presently claimed elements, then this rejection should be withdrawn.

CONCLUSION

In view of the above amendment and remarks, it is submitted that this application is now ready for allowance. Accordingly, reconsideration and reexamination are respectfully requested in view of the above amendments and remarks. Early notice to that effect is solicited. If in the

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opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney at (512) 306-0321 .

Respectfully submitted,




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Date: December 22, 2004

Certificate of Facsimile

I hereby certify that this correspondence is being transmitted by fax to the United States Patent and Trademark Office on the date shown below.

Anthony Edw. J Campbell



Wednesday, December 22, 2004

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